The Daily News of Los Angeles, a Division of Cooke Media Group, Inc. *and* Los Angeles Newspaper Guild, the Newspaper Guild Local 69, AFL–CIO. Case 31–CA–17751

August 27, 1991

DECISION AND ORDER

MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On March 28, 1990, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

Contrary to our dissenting colleague, we agree with the judge, for the reasons stated by him, that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally withholding annual merit wage increases from unit employees. While not explicitly set forth by the judge, two well-settled legal principles, both enunciated by the Supreme Court in its decision in *NLRB v. Katz*, 369 U.S. 736 (1962), underlie the judge's analysis. First, an employer negotiating with a newly certified bargaining representative is prohibited under Section 8(a)(5) from altering established terms and conditions of employment without first notifying and bargaining with the union. Second, merit increases are included in this prohibition unless they ''are in fact simply automatic increases to which the employer has already committed himself. . . .'' *Katz*, supra at 746.

The Board has made it clear that the same bargaining obligation applies whether the issue involved is the employer's unilateral granting of merit increases or its unilateral discontinuance of them. As the Board explained in *Oneita Knitting Mills*, 205 NLRB 500 fn. 1 (1973):

> An employer with a past history of a merit increase program neither may discontinue that program . . . nor may he any longer continue to unilaterally exercise his discretion with respect to such increases, once an exclusive bargaining agent is selected. *NLRB v. Katz*, 396 U.S. 736 (1962). What is required is a maintenance of preexisting practices, i.e., the general outline of the program; however, the implementation of that program (to the extent that discretion has existed in determining the amounts or timing of the increases) becomes a matter as to which the bargaining agent is entitled to be consulted.

Thus, once the judge found that the Respondent had ''a pattern and practice of evaluating the unit employees at the time of each employee's anniversary date,'' he correctly concluded that the Respondent was required to maintain that practice, absent an agreement with the Union to the contrary. Given the Union's specific request that the Respondent continue its merit wage program during negotiations, it clearly did not agree to any discontinuance of that program.

The dissent mischaracterizes several of the judge's findings. First, the judge did not find that the Respondent's merit wage program was ''purely discretionary.'' Although the judge found that the amount that an employee would receive was discretionary, he found that the *timing* of the increase—at the employee's annual evaluation—was not discretionary and thus that the merit wage program had become an established term and condition of employment.

The dissent also mischaracterizes the judge's finding that the Union ''specifically waived any objection or legal position it may have otherwise taken on the matter of merit increases.'' The Union agreed to the Respondent's continuing exercise of its discretion in unilaterally determining the *amount* of each employee's merit increase based on his or her annual evaluation. Absent this agreement, the Respondent would have been obligated, as explained in Oneita, to bargain with the Union over this discretionary aspect of the merit wage program. In light of this agreement, however, the Respondent was privileged to *grant* merit wage increases at the employee's annual evaluation without bargaining with the Union. It was in this context that the judge found that the Union had waived its bargaining rights over the Respondent's granting of merit wage increases.

The Board cases relied on by the judge are consistent with the legal principles discussed above. Thus, in *Central Maine Morning Sentinel*, 295 NLRB 376 (1989), the Board found that the employer unlawfully withheld a wage increase from unit employees where the granting of the increase had become an established practice, although the amount of the increase was discretionary. In *General Motors Acceptance Corp.*, 196 NLRB 137 (1972), *Allied Products Corp.*, 218 NLRB 1246 (1975), and *Rochester Institute of Technology*, 264 NLRB 1020 (1982), enf. denied 724 F.2d 9 (2d Cir. 1983), the Board found that the employers unlawfully discontinued their merit wage programs during negotiations with newly certified unions.

Similarly, the cases relied on by the Respondent and our dissenting colleague are distinguishable from the present case. As noted by the judge, in *American Mirror Co.*, 269 NLRB 1091 (1984), the Board found no violation in the employer's withholding of wage increases where the increases were not an established practice because of their variance in past years as to

both timing and amount. And in *Anaconda Ericson, Inc*., 261 NLRB 831 (1982), the Board found that the employer lawfully withheld wage increases where the amounts were discretionary, the parties during negotiations had begun bargaining over wages and the union did not unconditionally agree to the wage increase. Finally, the dissent's conclusion that the Union in this case sought ''the best of both worlds'' misses the mark. What the Union sought was nothing more than what the Board and courts require the Respondent to do, namely, to maintain the existing terms and conditions of employment pending negotiated changes in past practice or an impasse in bargaining. The Respondent, on the other hand, agreed to defer bargaining over economic issues until after bargaining over noneconomic issues and then unilaterally changed the wages of unit employees. As the Board stated in *Central Maine Morning Sentinel*, supra at 376, ''Simply stated, what the Respondent did here was to confront the Union with an obligation to make a decision on a proposed wage increase before the bargaining over noneconomic issues was concluded.''

For these reasons, we adopt the judge's finding that the Respondent violated Section 8(a)(5) by unilaterally discontinuing its merit wage program.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, The Daily News of Los Angeles, A Division of Cooke Media Group, Inc., Woodland Hills, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

MEMBER OVIATT, dissenting.

My colleagues have adopted the judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by not continuing a discretionary wage increase program during negotiations for a collective-bargaining agreement.[1]

From January 1, 1986, to the commencement of the negotiations with the Union on June 14, 1989, the Respondent operated under a policy of evaluating the performance of each employee, usually on an annual basis. The performance review, together with a recommendation for a salary increase, if any, was submitted to the Respondent's editor for final approval. Any resulting salary increase was based on the perceived efforts and ability of the individual employee, and his or her value to the newspaper. Whether to give any increase, and the amount, was totally discretionary and varied among the unit employees.

At the commencement of negotiations in 1989, the Respondent's chief negotiator stated to the Union's negotiating committee that the Respondent considered all future wage increases, including merit increases, to be bargainable issues; was considering whether these discretionary merit increases would be discontinued, and asked the Union what its position would be if they were to be discontinued. The Union's chief spokesman, Smith, the judge found stated that he considered the salary adjustment to be an existing condition of employment that the Respondent could not unilaterally discontinue, and further that the Respondent should continue granting merit increases during the negotiations. The Respondent then asked the Union if it would give the Respondent ''credit'' in the wage negotiations for any discretionary merit increases awarded during the negotiating process. The Union responded by indicating that the Union's wage proposals were always in the form of a minimum wage scale ''which would most likely be above the current salary of the employees and that therefore how much the individual employee happened to be earning at the time the new wage scale was agreed upon'' would not matter and thus did not agree that the discretionary merit increases would have any effect on the bargaining.

At the July 5, 1989 bargaining session, the Company announced that it was discontinuing discretionary merit wage increases. The Union advised the Company that the Union considered such a discontinuance to ''constitute unlawful unilateral conduct.'' The judge found that the merit increase program of the Company has not been applied to unit employees since June 14, 1989, though it has been continued for non unit employees.

The majority adopts the conclusion of the judge that the Union, by orally indicating that the Respondent should continue the merit wage program, waived any objection it might have had to merit increases during

[1] The majority apparently misapprehends my conclusion, infra, that the judge found that even though ''the application of the merit pay program was purely discretionary the Respondent was required to continue it.'' First, ''application'' is defined as ''the act of applying: specifically, . . . b, the act of putting something to use.'' (Webster's New World Dictionary (2d College ed. 1972)). That is indeed precisely what is involved here. Second, the judge stated that the Respondent maintained the policy of its predecessor in annually evaluating the performance of each employee at the time of the employee's anniversary date. I readily concur with counsel for the General Counsel in saying that that is ''generally'' the case. However, the Respondent also at its option can, and has, evaluated employees more frequently, though the parties agree it doesn't happen very often, ''just because of the nature of the thing,'' as the judge aptly expressed it. The record further shows that in such situations the Respondent has sometimes retained, and at other times changed the timing of the employee's next scheduled evaluation date. The freedom or authority to make choices, or the power ''to judge or act'' is by definition, ''discretion.''

Finally, I am perplexed by my colleagues apparent discomfort over my accurate reference to the judge's finding that the Union ''specifically waived any objection or legal position it may have otherwise taken on the matter of merit increases'' (majority at par. 7, supra, quoting the administrative law judge at sec. III,C, first par.). The majority then states, ''The Union agreed to the Respondent's continuing exercise of its discretion in unilaterally determining the amount of each employee's merit increase based on his (or her) annual evaluation.'' Ibid. (Emphasis in majority.) Their statement is simply wrong–as the Union itself concedes. Rather, as detailed more fully below (see discussion of *American Mirror* and *Rochester Institute* of Technology, infra) what the Union demanded here was the ''best of both worlds.''

negotiations. That, however, was neither the issue nor the question posed by the Respondent. Even though the parties had agreed to postpone the discussion of economic improvements until the latter stages of the negotiations, during the first negotiating meeting the Company inquired whether it would receive ''credit'' for any increases it might award pursuant to the merit increase program. The Union failed to answer that question in replying that any merit increases that were granted would not matter to the outcome of the wage negotiations.

At no point did the Respondent inquire whether the Union had any objection to the continuance of the merit pay program. The Union stated in response to the Respondent's question only that it viewed the program as a practice which could not be discontinued. Whether the Union waived any objections it might have to the continuation of the merit pay program is not controlling. That would only establish that the Respondent would have an affirmative defense to the granting of merit increases. Indeed, if the Respondent exercised its discretion not to grant increases that ''waiver'' would seem to require dismissal of the 8(a)(5) allegation.

Secondly, the judge seems to imply that the parties' agreement to defer economics until the latter stages of negotiations coupled with the Union's ''waiver,'' constituted an agreement ''to continue granting the discretionary merit increases as it would have done in the absence of the Union.'' An agreement requires some semblance of a meeting of the minds of the contracting parties (not simply the charging party, General Counsel, and judge). The contrary is evident.

Thirdly, the Union's position was that this merit increase program was a practice which the Respondent could not unilaterally discontinue. The judge found, now joined by the majority, that even though the application of the merit pay program was purely discretionary the Respondent was required to continue it under Section 8(a)(5) protection. That finding, in my view, is not consistent with Board law.

The judge, and now the majority, relies on our decision in *Central Maine Morning Sentinel*, 295 NLRB 376 (1989), to support its conclusion here. That case, however, involved an employer's established practice of providing annual increases, of the same percentage, given to all employees across the board at the same time. There is no evidence that the merit pay program here included any of those factors and thus I do not find that decision controlling here. Both *Anaconda Ericson, Inc*., 261 NLRB 831 (1982), and *American Mirror Co*., 269 NLRB 1091 (1984), were relied upon by the Respondent in support of its position. The judge, and my colleagues, conclude that those decisions are not controlling. The judge found that *Anaconda* was inapposite because there was no finding that the union had agreed that the employer should continue merit increases. Because I find no such agreement or waiver here, I do not agree that *Anaconda*, which dismissed this allegation of the complaint, can be disposed of so easily. Likewise, the judge here distinguished *American Mirror* on grounds that the ''across-the-board increases under consideration there varied as to the date of implementation and amount,'' and thus had no application to the situation present here. However, there is no dispute that the amount of increase here, if any, given individuals under the merit pay program varied widely among individuals depending on their performance and ''his or her value to the newspaper'' and were ''totally discretionary.'' (ALJD sec. III,B.)

Accordingly, I find the Board's analysis in *Anaconda* and *American Mirror* persuasive. The amounts of the merit increases were purely discretionary. There was no evidence that the size or application of the merit increases was predetermined. I would adhere to the position taken by the judge in *American Mirror* when he said:

> What the Union wanted was a continuance of interim or past discretionary raises outside the contract negotiations. The Union, in other words, wanted the best of both worlds, and under the facts of this case I find that the Company had no legal duty to comply with the Union's request (at 1095). That is precisely what the Union sought here—the ''best of both worlds.''

I agree with this rationale. I find the Board's decisions in *Anaconda* and *American Mirror* to be controlling here. Accordingly, I would dismiss the complaint and dissent from my colleagues failure to follow this precedent.

Ann Weinman, Esq., for the General Counsel.
Thomas P. Burke, Jamie Johnson, and Thomas Petrides, Esqs. (Petitt & Martin), of Los Angeles, California, for the Respondent.
Ellen Greenstone, Esq. (Greenstone, Holquin, Garfield & Knox), of Los Angeles, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing with respect to this matter was held before me in Los Angeles, California, on December 12 and 13, 1989. The initial charge was filed on July 11, 1989, by Los Angeles Newspaper Guild, The Newspaper Guild Local 69, AFL–CIO (the Union). Thereafter, on August 30, 1989, the Regional Director for Region 31 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging a violation by The Daily News of Los Angeles, a Division of Cooke Media Group, Inc. (Respondent), of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

The parties were afforded a full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from the General Counsel, counsel for the Union, and counsel for the Respondent.

On the entire record, and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Delaware corporation engaged in the newspaper publishing business, and maintains its principal place of business in Woodland Hills, California, where it is engaged in printing and distributing its daily newspaper. In the course and conduct of its business operations, the Respondent annually derives gross revenues in excess of $200,000, and annually purchases and receives goods or services valued in excess of $50,000 directly from suppliers located outside the State of California.

It is admitted, and I find, that the Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted that the Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issue*

The principal issue raised by the pleadings is whether the Respondent has violated and is violating Section 8(a)(1) and (5) of the Act by discontinuing its past practice of granting annual wage increases to employees at the time of their annual performance evaluations.

B. *The Facts*

The facts are not in material dispute. On May 8, 1989, the Union was certified as the collective-bargaining representative of certain of Respondent's employees in the following unit:

> All full-time and regular part-time editorial department employees employed by Respondent at its Woodland Hills, Glendale, Lancaster, Palmdale, Sacramento, Santa Clarita, Simi Valley, and Thousand Oaks, California and Washington, D.C. locations.

Since January 1, 1986, when the Respondent took over the operation of its predecessor, the Valley News, the Respondent has maintained the policy of its predecessor in annually evaluating the performance of each employee at the time of the employee's anniversary date, and submitting the performance review forms, together with any recommendation for a salary increase, to the the editor for final approval. The resulting salary increase, if any, is based on merit, and may range from no increase to a substantial increase depending on the perceived efforts and ability of the employee, and his or her value to the newspaper. The amount of the increase, if any, is totally discretionary. As an example of the Respondent's general practice with regard to salary increases, the stipulated facts show that in 1986 there were 81 employees who received performance evaluations; 18.5 percent of these individuals received no increase, while the remaining employees received increases ranging from 2 to 20 percent. Generally, for the years 1986 to 1989, it appears that from about 40 to 50 percent of the unit employees receive increases from 3 to 5 percent.

Bargaining negotiations commenced on June 14, 1989. The parties agreed that they would negotiate the noneconomic issues first, and then take up the economic issues. The Respondent's spokesman, Tom Burke, stated that the Respondent was considering whether to eliminate the merit increases, and asked what the Union's position would be on this issue. The Union's administrative officer, James Smith, stated that he considered the salary increases to be an existing condition of employment which the Respondent could not unilaterally discontinue, and that during the course of bargaining the Respondent should continue to grant the increases to employees, individually, on their anniversary dates. Burke said that the Respondent wanted to eliminate this practice because of the adverse economic effect it would have on the Respondent, and asked whether the Union would be willing to give credit to the Respondent if the practice was continued during the negotiations. Smith replied that, although the Union had not yet made a wage proposal, the Union's wage proposals were always in the form of a minimum pay scale which would most likely be above the current salary of the employees, and therefore it would not matter how much an individual employee happened to be earning at the time the wage scale was agreed on. Thus, Smith disagreed that the continuation of the Respondent's merit increase practice during the course of the bargaining negotiations would adversely affect the Respondent. Burke replied that the Respondent would continue to consider whether it would discontinue the increases during the course of bargaining.

At the bargaining session on July 5, 1989, Burke announced that the Respondent had decided to discontinue granting merit increases to the unit employees. Smith reiterated the Union's position, stated that he considered this to constitute unlawful unilateral conduct, and advised the Respondent that the Union would take appropriate action. To the date of the hearing, December 13, 1989, the parties have continued to bargain over noneconomic proposals, and the negotiations have not yet advanced to the stage of wage negotiations.

The Respondent has continued, and is continuing, to issue annual performance appraisals to all of its employees. However, since about June 14, 1989, the Respondent has discontinued granting annual merit increases to its editorial department employees, while continuing to grant them to its nonrepresented employees.

C. *Analysis and Conclusions*

At the first negotiating session the Union advised the Respondent that it should continue granting merit increases during the course of bargaining as it had done in the past. In this manner the Union specifically waived any objection or legal position it may have otherwise taken on the matter of

merit increases, and therefore, according to the positions taken by the Union and the General Counsel, the Respondent, after having agreed that the subject of economics, including wages, would be deferred to the latter stages of negotiations, was then required to continue granting the discretionary merit increases as it would have done in the absence of the Union. The Respondent argues that it was privileged to discontinue the granting of discretionary merit increases.

In support of its position, the Respondent relies primarily on two Board cases, *Anaconda Ericson, Inc.*, 261 NLRB 831 (1982), and *American Mirror Co.*, 269 NLRB 1091 (1984). In *Anaconda Ericson*, unlike the instant case, the parties negotiated the issue of wages prior to the time the annual discretionary wage increases were customarily granted by the employer, and the union did not unconditionally agree that the employer should continue its past practice of granting wage increases during the course of negotiations. In *American Mirror*, unlike the instant case, there was no existing pattern of wage increases since the across-the-board wage increases the employer elected to periodically grant varied as to date and amount. Moreover, the parties did not defer the negotiation of wages, but rather the employer took the position that any wage increases which would be granted were then ''on the table'' for negotiation.

The record evidence establishes that the Respondent had instituted a pattern and practice of evaluating the unit employees at the time of each employee's anniversary date, and that as a result of such evaluation the Respondent would grant a discretionary merit salary increase to the employee in an amount commensurate with the employee's evaluation; and further, that the employees were fully aware of the Respondent's practice in this regard, and had come to expect that their salary would be adjusted in this manner at the time of each employee's anniversary date. Moreover, at the commencement of bargaining, the parties agreed to postpone the negotiation of salaries until after the noneconomic contract items had been negotiated, and the Union had specifically requested that the Respondent continue with its customary aforementioned practice of granting salary increases. Under these circumstances, it appears that the Board's recent decision in *Central Maine Morning Sentinel*, 295 NLRB 376 (1989), is controlling herein. In finding a violation of Section 8(a)(5) of the Act, the Board stated as follows:

> The judge found, and we agree, that the Respondent had an established practice of granting an annual wage increase to all its employees not covered by a collective bargaining agreement. The editorial employees in this case who had selected the Union as their bargaining representative remained within this class following certification and the onset of contract negotiations, and therefore reasonably expected that the wage increase would continue to be part of their ongoing conditions of employment, at least until an initial collective-bargaining agreement was in place to establish a wage scale independent of the Respondent's past practice, or until the parties had bargained to impasse about changing these conditions. Neither event occurred here. [Footnote omitted.]

While the Respondent would distinguish the instant case from *Central Maine Morning Sentinel*, on the basis that the annual wage increases in *Central Maine Morning Sentinel* were granted to all employees at the same time and each employee's wages was increased by the same percentage, that distinction does not mandate a different disposition of the issue. Thus, as in the instant case, when there is a well-established pattern of granting wage increases to employees who have come to expect an annual evaluation together with a salary increase commensurate with the results of that evaluation, it would seem of no material significance that all employees were not evaluated simultaneously, or that their evaluations were not identical. See *General Motors Acceptance Corp.*, 196 NLRB 137 (1972); *Allied Products Corp.*, 218 NLRB 1246 (1975), enfd. 548 F2d 644 (6th Cir. 1977); *Rochester Institute of Technology*, 264 NLRB 1020 (1982), enf. denied on other grounds 724 F.2d 9 (2d Cir. 1983).

On the basis of the foregoing, I find that the Respondent has violated, and is violating, Section 8(a)(5) of the Act as alleged.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Union is the exclusive bargaining representative of Respondent's employees in the following appropriate unit:

> All full-time and regular part-time editorial department employees employed by Respondent at its Woodland Hills, Glendale, Lancaster, Palmdale, Sacramento, Santa Clarita, Simi Valley, and Thousand Oaks, California and Washington, D.C. locations.

4. By unilaterally withholding wage increases from employees the Respondent has violated and is violating Section 8(a)(5) and (1) of the Act.
5. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has failed to bargain in good faith with the Union by withholding wage increases to which bargaining unit employees were entitled, I shall recommend that the Respondent be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act, including the posting of an appropriate notice.

Since the Respondent has been found to have withheld wage increases to which bargaining unit employees were entitled and would have received but for the Respondent's unilateral conduct in violation of Section 8(a)(5) of the Act, I shall recommend that each of the affected employees in the bargaining unit described above be made whole for the increases they would have received from the date such increases were discontinued, apparently on about June 14, 1989, by payment to them of the difference between their actual wages and the wages they would have otherwise received. The amount shall be computed on a quarterly basis in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, The Daily News of Los Angeles, a Division of Cooke Media Group, Inc., Woodland Hills, California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union by unilaterally withholding annual merit wage increases from employees in the appropriate unit represented by Los Angeles Newspaper Guild, The Newspaper Guild Local 69, AFL–CIO.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the employees in the appropriate unit for any monetary losses they may have suffered by reason of Respondent's unilateral withholding of annual wage increases which the employees would have received in the manner set forth above in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its various facilities copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally withhold any merit wage increases from you to which you may have been entitled as a result of your annual evaluations.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them as set forth in Section 7 of the Act.

WE WILL bargain in good faith with the Los Angeles Newspaper Guild, The Newspaper Guild Local 69, AFL–CIO as the exclusive representative of our employees in the following appropriate unit:

> All full-time and regular part-time editorial department employees employed by Respondent at its Woodland Hills, Glendale, Lancaster, Palmdale, Sacramento, Santa Clarita, Simi Valley, and Thousand Oaks, California and Washington, D.C. locations.

WE WILL make whole the employees in the above appropriate unit for any monetary losses they may have suffered by reason of our unilateral withholding of the annual wage increases they would have received.

THE DAILY NEWS OF LOS ANGELES, A DIVISION OF COOKE MEDIA GROUP, INC.